

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS
ON REFERRAL BY THE COMMISSIONER OF REVENUE**

IN THE MATTER OF)
)
 R. D.) OAH Case No. 10-0033-CSS
) CSSD Case No. 001156100
_____)

DECISION & ORDER

I. Introduction

The obligor, R. D., appeals an Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on November 17, 2009. Mr. D. appeared by telephone at a hearing held on February 10, 2010. The custodian, K. R., also appeared by telephone. Erinn Brian represented CSSD. The children are R. D. and N. D.

Because Mr. D. has not met his burden of proving that the division's decision was in error, the amended order is affirmed.

II. Facts

In the last part of 2008 and for the greater part of 2009, Mr. D. was working for the No Name Administration earning more than \$10,000 per quarter. In the third quarter of 2009, Mr. D. quit his job with the No Name Administration. Mr. D. testified that he quit because he felt that working for the No Name Administration was a dead end job and he thought there was a possibility that the job might someday be contracted out to a private company, as he asserts has happened in other parts of the country. Mr. D. testified that he is not working because he will be soon be going to college, where he will be seeking a four-year degree in criminal justice with a minor in carpentry, a combination that Mr. D. believes will prepare him for acceptance into law school. Mr. D. testified that after he becomes a lawyer he will be better able to provide support for his children.

Mr. D. was not a credible witness. He avoided giving responsive answers to direct questions. Some of his testimony did not make sense. For example, while someone might take a different job or pursue a different career, fear that his current job might end someday or that it lacked advancement potential is not rational motivation to quit and become unemployed.

CSSD estimated that Mr. D. earned total gross income of \$25,569.37 in 2008, and \$41,851.70 in 2009. Mr. D. agreed to provide his 2008 tax return and copies of his 2009 W-2 forms after the hearing. He did provide a copy of the 2008 tax return, but he did not provide any information regarding his earnings in 2009. The 2008 return shows that Mr. D.'s total 2008 income was actually \$27,107.

At all relevant times Ms. R. has had primary custody of the children.

III. Discussion

According to Civil Rule 90.3, child support in a primary custody situation is set at 27 percent of the obligor's adjusted income.¹ Adjusted income is the obligor's total income from all sources, adjusted for certain deductions such as tax, retirement contributions, etc.² When the obligor is voluntarily and unreasonably unemployed, income may be imputed based upon the parent's work history, qualifications, and job opportunities.³

For 2008, CSSD has slightly understated the amount Mr. D. earned. It is not known how much Mr. D. earned in 2009 because he has failed to provide income information. It is known that he was earning more than ten thousand dollars per quarter, or \$40,000 per year, before Mr. D. quit his job. When PFD income is added, this is very close to the amount of \$41,851.70 of gross income on which CSSD based Mr. D.'s 2009 and ongoing support amount.

While Mr. D. may consider working for the No Name Administration a "dead end" job, the job did provide him with a steady career-level income and a means of support for his children. Mr. D. did not provide any evidence that his job was in any imminent danger of elimination. While Mr. D. is free to pursue his dream of being a lawyer/carpenter, the law does not require his children to subsidize this dream through reduced support for the four or seven years he is in college pursuing a career as a lawyer. While such a career might eventually produce a slightly higher level of income with which Mr. D. could support his children, this potential increase does not justify an absence of support while the children are young and in need of support.

At a formal hearing, the person requesting the hearing has the burden of proving that CSSD's decision was in error.⁴ Mr. D. has not provided more accurate income information than that which CSSD used to calculate his support obligation. Mr. D. has not shown that he is unable to continue earning the amount he was making while working for the No Name Administration. The evidence shows that, if Mr. D. is in fact now earning less than he did while working for the No Name Administration, he is voluntarily and unreasonably underemployed.

¹ Civil Rule 90.3(a)(2)(B).

² Civil Rule 90.3(a)(1).

³ Civil Rule 90.3(a)(4).

⁴ 15 AAC 05.030(h).

IV. Conclusion

Because Mr. D. has not met his burden of proving that CSSD’s decision was in error, the amended order should be affirmed.

V. Order

IT IS HEREBY ORDERED that the Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division on November 17, 2009 be AFFIRMED.

DATED this 8th day of March, 2010.

By: Signed _____
DALE WHITNEY
Administrative Law Judge

Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Under AS 25.27.062 and AS 25.27.250, the obligor’s income and property are subject to withholding. Without further notices, a withholding order may be served on any person, political subdivision, department of the State, or other entity.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 25.27.210 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 31st day of March, 2010.

By: Signed _____
Signature
Jerry Burnett _____
Name
Deputy Commissioner _____
Title

[This document has been modified to conform to technical standards for publication.]